IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.1211 OF 2000

Shri Om Prakash Jalan,
69/B, Nepean Sea Road,
Mumbai-400 006. .... Petitioner

- Versus -

1. The Competent Authority appointed under the SAFEMA having its office at Mittal Court, C-Wing, 3rd Floor, Nariman Point, Mumbai - 400 021.

2. The Appellate Tribunal for Forfeited Property, having its office at 4th Floor, "A" Wing, Lok Nayak Bhawan, Khan Market, New Delhi - 110 003 by its

a) Chairman - Justice J.E. Prasad

b) Member - Smt. K. Shukla

c) Member - Shri Devendra Narain

3. The State of Maharashtra .... Opponents

Shri Maqsood Khan for the Petitioner.

Sarvasri J.C. Satpute i/b H.V. Mehta
for the Respondent No.1.

Ms U.V. Kejariwal, Addl.Public Prosecutor,
for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
A.A. SAYED, JJ.

DATED: NOVEMBER 19, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. By the present petition the petitioner is

seeking to challenge the order passed by the competent authority on 4-11-1999 regarding the forfeiture of the petitioner's property and confirmed by the Appellate Tribunal on 19-7-2000 in terms of the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter called as "SAFEMA". The challenge is two-fold; firstly, that when the show cause notice under Section 6(1) of SAFEMA was issued, it was issued in relation to the detention order dated 3-3-1984, issued against the petitioner and another detention order dated 18-12-1974 issued against his father. When the said show cause notice was sought to be challenged, a statement came to be made by the Advocate for the competent authority that the proceedings under SAFEMA in relation to the properties in question would be solely on the basis of the detention order issued against the petitioner and not against the father of the petitioner. However, while deciding the matter, the order for forfeiture under SAFEMA has been issued solely on the basis of the order of detention issued against the father of the petitioner as by the time the proceedings under SAFEMA came to be concluded, the order of detention against the petitioner was revoked. Secondly, that the petitioner is not aware as to whether the order of detention which was issued against the father still continued to be in force at the relevant time or it was subsequently revoked/quashed and

in case of revocation/quashing thereof, the entire proceedings were bound to fail.

2. With reference to the first ground of challenge, it was sought to be contended on behalf of the petitioner that since there was a categorical statement made on behalf of the competent authority that the order of detention issued against the father of the petitioner would not be made a ground for proceeding under SAFEMA, it was not permissible for the competent authority to issue order of forfeiture of the property of the petitioner under SAFEMA on the basis of the order of detention issued against the father of the petitioner. The learned counsel for the petitioner, however, fairly conceded that since the statement was not made by the Advocate General and it related to legal consequences flowing from the provisions of law in relation to the liability of the person arising under SAFEMA consequent to order of detention issued under COFEPOSA, the statement could not be binding upon the competent authority and the competent authority was bound by the statutory provisions while dealing with the matter arising under SAFEMA. Being so, merely because the Advocate for the competent authority, even assuming that he had made a statement as alleged, it could not have binding effect upon the competent authority and hence on that ground there is no scope for interference in the

impugned order. The first ground of challenge, therefore, fails.

3. As regards the second ground of challenge, undisputedly, the petitioner was neither aware at the time of filing of the petition nor even aware till this day as to whether the order of detention issued against the petitioner had been revoked/quashed at any time. It would be too premature for this Court to deal with the challenge to the impugned order on the said ground. The learned counsel for the petitioner tried to persuade us to adjourn the matter on that ground. However, considering the fact that the matter relates to the year 2000, we are not at all inclined to grant any adjournment in the matter. Since the order which is sought to be referred relates to the father of the petitioner and we are already in the year 2007, whereas the order was issued in 1974, it should be to the knowledge of the petitioner by this time as to whether such order was revoked/quashed or not. In any case, suffice to observe that in case the petitioner is able to lay his hands on any such order of revocation/quashing of the order of detention dated 18-12-1974, which was issued against the father of the petitioner, nothing would prevent the petitioner from approaching this Court seeking review of this order. Certainly such liberty can be granted to the petitioner

while disposing this petition. However, on that ground, as the matter stands today, it would not be appropriate either to interfere in the impugned order or even to adjourn the matter any further.

4. For the reasons stated above, therefore, the petition fails and is hereby dismissed. The rule is discharged. Liberty to the petitioner to move for review of this order in case the petitioner is able to lay his hands on any order which could disclose the revocation/quashing of the order of detention dated 18-12-1974, which was issued against the petitioner's father. No order as to costs.

(A.A. Sayed, J.) (R.M.S.Khandeparkar, J.)

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